

**STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT**

NEW MEXICO ENVIRONMENT)
DEPARTMENT,)
Complainant,)
)
v.)
)
MCT INDUSTRIES, INC.)
EPA I.D. NMR000008821)
Respondent)
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STIPULATED FINAL ORDER

The New Mexico Environment Department ("Department") and MCT Industries, Inc. ("Respondent"), (collectively the "Parties"), pursuant to 20.1.5.600.B(2) NMAC, stipulate to resolve the alleged violations specified in the Notice of Violation ("NOV") issued by the Department to the Respondent on February 19, 2021. The Parties have agreed on the terms and conditions specified in this Stipulated Final Order ("Order").

BACKGROUND

1. The Department is an agency of the executive branch of the State of New Mexico pursuant to NMSA 1978, § 9-7A-4. The Department is authorized to administer and enforce the New Mexico Hazardous Waste Act ("HWA"), NMSA 1978, §§ 74-1-1 to -14, and the Hazardous Waste Management Regulations ("HWMR"), 20.4.1 NMAC, including assessing civil penalties for violations thereof.

2. The Respondent is a manufacturer of trailers and other mobile equipment and is a Small Quantity Generator of Hazardous Waste, as defined in the Notification of Regulated Activity Instructions (EPA Form 8700-12), EPA I.D. Number NMR000008821, and is located at 500 Tierra Montana Loop, Bernalillo, New Mexico ("Facility").
3. On July 20, 2020, NMED conducted a hazardous waste compliance evaluation inspection ("Inspection") at the Facility. During the Inspection, the Department observed potential violations of the HWA and the HWMR.
4. As a result of the Inspection and in consideration of the documentation and information provided, the Department issued an NOV to the Respondents on February 19, 2021.

ALLEGED VIOLATIONS

5. The Department alleged the following violations in the NOV dated February 19, 2021:
 - a) Failure to conduct a complete hazardous waste determination, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR §262.11.
 - b) Failure to establish a Satellite Accumulation Area ("SAA") at or near the point of generation and under the control of an operator, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR §262.15(a).
 - c) Failure to label containers of hazardous waste at or near the point of generation with the words "Hazardous Waste", which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.15(a)(5(i).
 - d) Failure to keep containers of hazardous waste at or near the point of generation closed, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.15(a)(4).
 - e) Failure to keep containers of hazardous waste closed during accumulation, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR 262.16(b)(2)(iii)(A).

f) Failure to post the name and phone number of the Emergency Response Coordinator, Fire Department phone number, and the locations of emergency equipment and evacuation routes near a phone in an accumulation area, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(9)(ii) .

g) Failure to ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures relevant to their responsibilities, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.16(b)(9)(iii).

h) Failure to store universal waste lamps in closed containers that are capable of preventing breakage, which is a violation of 20.4.1.1000 NMAC, incorporating 40 CFR § 273.13(d)(1).

i) Failure to label universal waste lamps or containers holding such lamps with the words “universal waste”, or with other wording to identify contents, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 273.14(e) and 20.4.1.1001(B) NMAC.

j) Failure to demonstrate the length of time universal waste has accumulated, which is a violation of 20.4.1.1000 NMAC, incorporating 40 CFR § 273.15(c).

k) Failure to label containers of used oil with the words “Used Oil” or with other wording to identify contents, which is a violation of 20.4.1.1002 NMAC, incorporating 40 CFR § 279.22(c)(1) and 20.4.1.1003(A) NMAC.

COMPROMISE AND SETTLEMENT

6. All actions required to maintain or restore Respondent’s compliance have been completed.

7. The Respondent does not admit to any of the allegations in the NOV. To avoid further legal proceedings, the Department and the Respondent agree to the terms and conditions in this Order to resolve the alleged violations in the NOV.
8. The Respondent admits to the jurisdictional allegations of this Order and consents to the relief specified in the Order including the civil penalty.
9. In compromise and settlement of the alleged violations in the NOV, the Parties agree that the Respondent shall owe a civil penalty of \$12,600.00. Payments shall be made by certified check or other guaranteed negotiable instrument, payable to the "State of New Mexico-Hazardous Waste Emergency Fund," and shall be delivered to the Department at the following address by either hand delivery or U.S. Postal Service:

Bureau Chief
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505

10. Payments of the civil penalty shall be accompanied by a transmittal letter referencing this Order.

OTHER TERMS AND CONDITIONS

ENFORCEMENT

13. Except as provided in Paragraph 14 (Covenants Not To Sue), the Department reserves all of the powers, authorities, rights, and remedies, whether administrative or judicial, civil or criminal, legal or equitable, to enforce the requirements of the HWA, HWMR, or Permit, for any past, present or future violations not addressed in the NOV. In any such action, the Respondent reserves the right to assert any defenses that it may have.
14. The Department retains its right to enforce this Order by administrative or judicial action,

and the Respondent reserves the right to assert any defenses that they may have.

15. In the event that the Department elects to file a judicial action to enforce this Order, the Department shall file such action in the First Judicial District Court of Santa Fe County, New Mexico. The Respondent will not challenge that jurisdiction or that the venue lies with the First Judicial District Court of Santa Fe County, New Mexico.

COVENANTS NOT TO SUE

16. The Department covenants not to sue or take any administrative or civil action against the Respondent under the HWA, HWMR, and Agreement for any of the facts or violations alleged in the NOV or this Order. This covenant not to sue extends to the Respondent and its respective officers, directors, agents, employees, successors, and assigns and does not extend to any other person. This Covenant does not extend to future violations of the same HWA or HWMR requirements or violations of this Order.

17. Respondent covenants not to sue the State of New Mexico for any claims deriving from the NOV.

EFFECTIVE DATE

18. This Order shall become effective on the date it is approved and signed by the Department Secretary.

INTEGRATION

19. This Order merges all prior written and oral communications between the Department and the Respondent concerning the subject matter of the Order and contains the entire agreement between the Department and the Respondent.

BINDING EFFECT

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20. This Order shall be binding upon the Department and its successor agencies and shall be binding upon the Respondent and on its successors.

AUTHORITY OF SIGNATORIES

21. The persons executing this Order represent that they have the requisite authority to bind either the Department or the Respondent, as appropriate, to this Order, and that their representation shall be legally sufficient evidence of actual or apparent authority to bind the Department or the Respondent to this Order.

For the **NEW MEXICO ENVIRONMENT DEPARTMENT.**

By: _____ Date: _____
JAMES C. KENNEY
SECRETARY
NEW MEXICO ENVIRONMENT DEPARTMENT

For: **MCT INDUSTRIES, INC.**

By:  Date: January 4, 2022
TED MARTINEZ
PRESIDENT/CHIEF EXECUTIVE OFFICER
MCT INDUSTRIES, INC.

APPROVAL OF STIPULATED FINAL ORDER

Pursuant to 20.1.5.600.B(2) NMAC, this Order, agreed to by the Department and Respondent, is hereby APPROVED as a FINAL ORDER.

JAMES C. KENNEY
SECRETARY
NEW MEXICO ENVIRONMENT DEPARTMENT

Date: _____

APPROVAL OF STIPULATED FINAL ORDER

Pursuant to 20.1.5.600.B(2) NMAC, this Order, agreed to by the Department and Respondent, is hereby APPROVED as a FINAL ORDER.

JAMES KENNEY
SECRETARY
NEW MEXICO ENVIRONMENT DEPARTMENT

Date: _____